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In The

Supreme Court of the United States

October Term, 1971

No. 71-1082

REUBIN O'D. ASKEW, et al.,

Appellants,

v.

THE AMERICAN WATERWAY OPERATORS, INC., et al.,

Appellees.

On Appeal from the United States District Court for the Middle District of Florida

BRIEF FOR THE STATE OF MARYLAND AS AMICUS CURIAE

OPINION BELOW

The opinion of the three-judge District Court (Fla. Apx. 39) is reported at 335 F. Supp. 1241.

JURISDICTION

This appeal is from a final order entered in a suit for injunctive relief pursuant to 28 U.S.C., Sections 2281, 2284(3). The order was entered December 10, 1971. Notice of appeal was filed in the United States District Court,

Northern District of Florida, December 23, 1971. Jurisdiction of this Court is invoked in accordance with the provisions of 28 U.S.C., Section 1253, authorizing appeal from an order of a three-judge court permanently enjoining enforcement of a state statute when such order gives rise to a substantial question such as one involving conflict between state and federal interests. On April 17, 1972, this Court noted probable jurisdiction based on 28 U.S.C., Section 1253.

The State of Maryland files as amicus curiae pursuant to Rule 42(4), Supreme Court Rules of Procedure.

QUESTIONS PRESENTED

1. Whether the existence of the admiralty and maritime jurisdiction of the federal government precludes the proper exercise of the state police power to protect the states' natural resources from irreparable damage caused by oil.

2. Whether the states are preempted from enacting legislation to protect their natural resources from damage caused by oil because of federal legislation presently in force.

STATEMENT

Maryland is geographically a small state, encompassing 12,303 square miles. Of that total, 9,874 square miles are land and 703 square miles are inland water. The remaining 1,726 square miles represent the Chesapeake Bay, Maryland's great inland sea. The Bay is 195 miles long and from 2 to 22 miles wide. In addition to its vast area in Maryland, the Chesapeake Bay encompasses 1,511 square miles in the State of Virginia. Navigable to ocean-going ships, the Bay has two outlets to the Atlantic Ocean, one through the Chesapeake and Delaware Canal and one through its mouth.

Maryland is a water-oriented state. Fifteen of Maryland's 23 counties border on tidal water. The length of tidal shoreline in the state is 3,190 miles.

The Chesapeake Bay is the main source of Maryland's seafood industry, an industry which annually produces fish, crabs, oysters and clams valued at more than 19 million dollars dockside and more than 50 million dollars when processed. Maryland produces more than 50% of the nation's clams, more than 50% of the nation's striped bass and more than 30% of the nation's oysters. The Bay also produces more than one-half of the nation's blue crabs.

Maryland's fishing industry and related food-processing industry employ approximately 13,300 people, of which well over two-thirds are on a full-time basis. Recent studies have indicated that between 200,000 and 300,000 Marylanders annually spend an estimated 20 million dollars on goods and services needed to engage in saltwater angling. In addition to this, Maryland's fishing fleet has been valued as of January, 1970, at 149 million dollars.

The State is most concerned that these activities be protected. That oil pollution constitutes a threat to the vitality of the seafood-related industries cannot be questioned.

Wetland areas are a significant resource of the State of Maryland and constitute an irreplaceable link in life process. Many times as fertile as the best cultivated lands, such areas are unfortunately extremely sensitive to man's activities. These privately and publicly owned lands, subject to tidal flow, can be irreparably damaged by oil pollution. Since 60% to 90% of all fish are found at some time during their life cycles in a wetland habitat, it is in the State's interest to undertake programs which will serve to protect as much as possible these valuable areas.

The unique nature of wetlands and open surface waters found in the State makes Maryland an important area for migrating and wintering waterfowl. Approximately 35,000 people hunt in the Chesapeake Bay region and spend between 10.5 and 17.5 million dollars annually. These figures are augmented by the expenditure of over $60,000 annually in the hunting of rail birds and snipe and by roughly $250,000 for the purchase of furbearer pelts. The effect of oil pollution on wildfowl has been too well documented by recent oil spill disasters, including a number in the State of Maryland. Birds are extremely vulnerable to oil while nesting or fishing on the water. The oil leaves these birds helpless to care for themselves and faced with death by starvation or by a predator that they now are no longer able to evade. The State must have the power to insure that these tragedies will not occur again.

The very large amounts of oil shipped annually through the Port of Baltimore pose a constant threat to Maryland waters. For the calendar year of 1971, 6,997,487 tons of petroleum and petroleum products entered the Baltimore harbor. Approximately 4,000 ships used the port during 1971. Few states can claim so vital a maritime operation. The benefits that such a port bring to the people of Maryland must be balanced against the special dangers and responsibilities inherent in moving these very large amounts of oil and in directing Baltimore's increasingly busy facility.

Through the enactment of strict and progressive laws Maryland, like Florida, has sought to conserve its valuable water resources and thereby advance, preserve and protect the health, safety and welfare of its citizens.

The Maryland legislature by Chapter 243, Acts of 1970, effective July 1, 1970, enacted Sections 23-29D of Article

96A of the Maryland Code. Of greatest interest in connection with the issues now before this Court are the provisions of Section 29, which deal specifically with the discharge of oil upon navigable waters. This section clearly makes it a criminal offense to discharge oil in Maryland waters. Section 29B of the same article provides the state with a civil remedy to recover the costs of cleanup expenses:

> "The Maryland Port Authority and the Department of Natural Resources shall charge and collect a compensatory fee from the person responsible for the oil spillage. This fee shall cover the cost of labor, equipment operation, and materials necessary to eliminate the residue of oil spillage and the cost of restoring areas damaged by the spillage to their original condition and said fee shall be retained by the agency charging the fee."

Section 29BC allows recovery against the person responsible for the spillage by any person to the full extent of any damages to his real and personal property. Section 29D of that same article empowers the Department of Natural Resources "to require the repair of any damage done and the restoration of water resources", including mortality to fish and other aquatic life.

Further additions to Section 29 of Article 96A of the Maryland Code have recently been passed by the legislature and signed into law by the Governor of Maryland on May 26, 1972. Sections E through G, inclusive, now provide for a license fee on oil terminal facilities based on the oil storage capacity at the facility as this reflects possible impact to the natural resources of the State and also as the size of the facility reflects the utilization of these natural resources. The license fees revert to a fund which is used by the Department of Natural Resources basically to respond to oil spills, contain the same and restore the

waters when the immediate violator or discharger is not present or known. These provisions will have an effective date of July 1, 1972.

Though the Maryland oil spill provisions are not identical to those of Florida, the opinion of the lower court is so broad as to threaten all attempts by the individual states to cope with the increasing danger of oil pollution, which has such a catastrophic effect on their natural resources. The threat of oil pollution increases daily as greater volumes of oil are shipped in response to the nation's rising needs. In addition, offshore drilling in the Atlantic is contemplated for the future. The State has a strong interest in seeing that this is done properly and that the environment does not suffer.

Oil pollution of the water and its resultant damage to aquatic life is a problem unique to Maryland and other coastal states. Some of the states, including Maryland, have recognized these problems and have sought to deal effectively with them. Should this Court accept the reasoning of the lower court, state efforts to provide for a uniquely local problem will be severely retarded.

ARGUMENT

I.

THE ADMIRALTY AND MARITIME JURISDICTION OF THE FEDERAL GOVERNMENT DOES NOT PRECLUDE THE PROPER EXERCISE OF STATE POLICE POWER TO PROTECT THE STATES' NATURAL RESOURCES FROM IRREPARABLE DAMAGE CAUSED BY OIL.

In granting an injunction permanently enjoining the enforcement of the Florida Oil Spill Prevention and Pollution Control Act, Chapter 376, Florida Statutes Annotated, Chapter 70-224, the lower court cited the state legislation as an impermissible intrusion into the admiralty domain

as defined by Article III, Section 2 of the United States Constitution and later cases. The three-judge federal court relies heavily on *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), and *Knickerbocker Ice Company v. Stewart*, 253 U.S. 149 (1920), as authority for this position. Mr. Justice McReynolds, in writing for a five to four majority in *Jensen*, stressed the importance of uniformity in this area of the law. Just as states may not regulate interstate commerce where the subject is national in character and requires uniform regulation so, he argued, they may not legislate in maritime matters in such a way as to destroy "the very uniformity in respect to maritime matters which the Constitution was designed to establish or to hamper or impede freedom of navigation between the states and with foreign countries"; at 215.

The court's reliance on *Jensen* is inappropriate since not only is this decision not authority for the district court's determination but its own vitality is open to serious question. Mr. Justice Black, writing for the Court, in *Standard Dredging Corp. v. Michael Murphy*, 319 U.S. 306 (1943), indicated that *Jensen* had application only to workmen's compensation cases. "Indeed, the *Jensen* case has already been severely limited, and has no vitality beyond that which *may* continue as to workmen's compensation laws"; at 309 (emphasis supplied). The opinion goes on to speak to a fact situation closely parallel to the case at bar.

> ". . . Taxes on vessels and other business activities of operators have previously been upheld. We hold that nothing in Art. 3 sec. 2 of the Constitution places this tax beyond the authority of the state." at 310.

The issue of what constitutes permissible state legislation, regulating activities on navigable waters, is not a new one to this Court. In 1824 Mr. Chief Justice Marshall,

writing for the Court, found that the New York Legislature's grant of a right of exclusive navigation upon the waterways of the state was constitutionally impermissible; *Gibbons v. Ogden*, 22 U.S. 1 (1824). Marshall sought to harmonize the sometimes different concerns of the state and federal governments not by resort to Article III, Section 2 of the United States Constitution and a rather doctrinaire concept of strict uniformity but by allowing the states to regulate when there is no conflict with federal legislation under the commerce clause.

Cooley v. Board of Wardens, 53 U.S. 299 (1851), represents the genesis of the modern test of permissible state burdens on interstate commerce. Even though the pilotage fees involved state regulations of an activity upon navigable water, the Court chose to ignore any question of necessary maritime uniformity and rather formulated a more flexible litmus of when state regulation will be permitted. The Court indicated that, if as to a particular matter the benefits of state regulation outweigh the burdens on interstate commerce, then diversity of treatment will be permitted.

The Florida oil spill statute, found unconstitutional by the three-judge court, was an attempt by that state to legislate for the protection of its natural resources. Courts have traditionally recognized this right of the states to protect that over which they have a proprietary interest. See *Corsa v. Tawes*, 149 F. Supp. 771 (D.C. Md., 1956); *Lawton v. Steele*, 152 U.S. 133 (1894). Indeed, the mere instance of a constitutional power in the federal government does not preclude the exercise of state police powers with respect to all matters which might be made subject to national powers. For example, regarding the commerce power, which should have been the determinative

grounds in the case at bar, this Court in *Southern Pacific Co. v. Arizona*, 325 U.S. 76 (1945), stated:

> ". . . Although the commerce clause conferred on the national government power to regulate commerce, its possession of that power does not exclude all state power of regulation."

Relying on *Southern Pacific Co. v. Arizona, supra,* Judge Sobeloff in *Corsa v. Tawes, supra,* found the State of Maryland's exercise of its police power to regulate the commercial fishing industry within the three-mile limit to be valid as a subject permitting of diversity:

> ". . . [T]he same constitution which puts interstate commerce under the protection of Congress *recognizes the sovereignty of the states in local regulation for the protection of their natural resources.* If the adverse effect on interstate commerce is only incidental and indirct and is outweighed by the local benefits which the statute is designed to achieve, the commerce clause will not render the enactment invalid" at 776. (emphasis supplied)

Under the Submerged Lands Act of 1953, 43 U.S.C. 1311, Congress vested the states with a proprietary interest in the submerged lands from the shore to the three-mile limit. The states were charged with responsibilities: to manage, administer, lease, develop and use the submerged lands in accordance with applicable state law. Since there can be no doubt that oil pollution of the states' coastal waters will have the most catastrophic effect on marine life and its dependent industries, frustration of state initiatives such as Florida's, will leave the states powerless to carry out their responsibilities under the Submerged Lands Act, *supra.*

Justice McReynolds correctly stated in *Southern Pacific Co. v. Jensen, supra,* the similarity between permissible

state regulation in interstate commerce and permissible state regulation in maritime activities. In the exercise of its police power the states may act, in maritime and interstate commerce activities, concurrently with the federal government, except in fields preempted by Congress. See, e.g., *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440 (1960), involving a vessel on navigable waters having to comply with local air quality laws. The Court found that no impermissible burden is imposed on interstate commerce by the application to a steam vessel operating in interstate commerce of a city's smoke abatement code, notwithstanding that, unless it undergoes structural alteration, such a vessel cannot, without violating the code, perform within the city the necessary cleaning of its fires.

II.

THE INTENTION OF CONGRESS TO PREEMPT THE EXERCISE OF POLICE POWER BY THE STATE MUST BE CLEARLY MANIFESTED.

A careful study of the case law leads one to the conclusion that this Court has historically been reluctant to declare that an act of Congress has preemptive effect, particularly where such a holding would leave the states powerless as to health and safety matters in areas where local concern is great. In *Bethlehem Steel v. New York State Labor Relations Board*, 330 U.S. 767 (1947), Mr. Justice Frankfurter stated, at page 780:

> ". . . Since Congress can, if it chooses, entirely displace the states to the full extent of the far-reaching commerce clause, Congress needs no help from generous judicial implications to achieve the supersession of state authority. To construe Federal legislation so as not needlessly to forbid pre-existing state authority is to respect our Federal system. *Any indulgence in construction should be in favor of the states*, because Congress can speak with drastic clarity whenever it

chooses to assure full Federal authority, completely displacing the states." (emphasis supplied)

In *Reid v. Colorado*, 187 U.S. 137 (1902), the Supreme Court stated:

> "It should never be held that Congress intends to supersede, or by its legislation suspend, the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested. This Court has said — and the principle has been often reaffirmed — that 'in the application of this principle of supremacy of an act of Congress in a case where the state law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.' *Sinnott v. Davenport*, 22 How. 227, 243, 16 L. Ed. 243, 247."

The District Court stated that state legislation, such as Florida has enacted, conflicts with the federal "Water Quality Improvement Act of 1970", 84 Stat. 91 (33 U.S.C. Sections 1161, *et seq.*). But the federal legislation, far from preempting the field, actually extends an invitation to the states to supplement the federal approach. For example, 33 U.S.C. Section 1161(e) and (o)2 expressly provide that the federal statute will not preclude any state from enacting any additional requirement or liability with respect to the discharge of oil. If, as the lower court states, Congress is unable to extend this right to the states, then subsections (e) and (o)2 of Section 1161 are a nullity. Since this Court has previously found Congressional delegation to the states of the power to enact laws destructive of constitutionally required uniformity to be a proper exercise of Congressional power, these subsections of Section 1161 are effective in extending to the states power to legislate in this area. See *Prudential Insurance Co. v. Benjamin*, 328 U.S. 408 (1946).

In light of the express words of Congress contained in the Water Quality Improvement Act, *supra*, and the statement by Mr. Justice Frankfurter in *Bethlehem Steel v. New York State Labor Relations Board*, *supra*, that "any indulgence in construction should be in favor of the states" (at 780), Florida's Oil Spill Prevention Act cannot be said to have been preempted by the Federal Water Quality Improvement Act.

The Florida legislation provides for liability to the full extent of any damages provable. The lower court found this to be in conflict with the Limitation of Liability Act, 46 U.S.C., Sections 183, *et seq.* This statute, which restricts the liability of shipowners to the extent of their investment, does not prevent states from enacting liability statutes of their own, and there is nothing in the Limitation of Liability Act which states otherwise. This Court has stated that preemption will only be found where (1) there is direct conflict between the two schemes of regulation, such that both cannot stand, (2) there is a specific statement of Congressional intent to preempt the field, or (3) the nature of the subject matter of the regulation must be such as to permit no other conclusion than that Congress intended to preempt the field. See *Florida Lime and Avocado Growers*, 373 U.S. 132 (1963).

Clearly, the federal limited liability statute can exist side by side with either the Florida or Maryland liability provisions. Compliance with either the state or federal act does not place a party in violation of the other. Secondly, as indicated, there are no express words of preemption. Lastly, the subject matter of the regulation is uniquely local in nature, and it is manifest that Congress considered it to be such and has encouraged a local response to local problems.

CONCLUSION

Drawn into question is the ability of the coastal states to protect their marshes and beaches, to protect their navigable and nonnavigable waters and to protect the myriad life forms which exist in these areas from the ravages of oil pollution. It has been the unwavering intent of Congress to provide for a local response to what are uniquely local problems. The decision of the lower court drastically weakens that approach by imposing the most serious legal restraints on the states' right to legislate in the field of water pollution. This Court has nourished and sustained our system of federalism in the past. The District Court decision constitutes an unfortunate blow to this working relationship and should be overturned.

Respectfully submitted,

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APPENDIX

Constitution of the United States

Article III

* * * * * *

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

* * * * * *

Water Quality Improvement Act of 1970

* * * * * *

Navigable Waters

(Chapter 23)

§ 1161. Control of pollution by oil — Definitions

(a) For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limtied to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, corporation, association, and a partnership.

(8) "remove" or "removal" refers to removal of the oil from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

Congressional declaration of policy; prohibition against discharge of oil; exceptions; rules and regulations; determination of harmful quantities of discharged oil; notification of United States of discharge of oil; penalties for failure to notify; procedure for imposition of civil penalties for knowingly discharging oil; withholding of clearance

(b) (1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone.

(2) The discharge of oil into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in harmful quantities as determined by the President under paragraph (3) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone, where permitted under article IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(3) The President shall, by regulation, to be issued as soon as possible after April 3, 1970, determine for the purposes of this section, those quantities of oil the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches, except that in the case of the discharge of oil into or upon the waters of the contiguous zone, only

those discharges which threaten the fishery resources of the contiguous zone or threaten to pollute or contribute to the pollution of the territory or the territorial sea of the United States may be determined to be harmful.

(4) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil from such vessel or facility in violation of paragraph (2) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(5) Any owner or operator of any vessel, onshore facility, or offshore facility from which oil is knowingly discharged in violation of paragraph (2) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $10,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 91 of Title 46, of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

National Contingency Plan for removal of discharged oil; provision; revisions; compliance

(c) (1) Whenever any oil is discharged, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, the President is authorized to act to remove or arrange for the removal of such oil at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after April 3, 1970, the President shall prepare and publish a National Contingency Plan for removal of oil pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil discharges, including containment, dispersal, and removal of oil, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil pollution control equipment and material, and a detailed oil pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil to the appropriate Federal agency;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil; and

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters.

The President may, from time to time, as he deems advisable, revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

Marine disasters; creation of a substantial threat of a pollution hazard; removal or elimination of pollution hazard; removal or destruction of vessel; employment of personnel; expenses

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provision of law gov-

erning the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection shall be a cost incurred by the United States Government for the purposes of subsection (f) of this section in the removal of oil.

Action by United States attorney to abate actual or threatened discharge of oil from an onshore or offshore facility; jurisdiction; nature of relief.

(e) In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

Liability of owner or operator of vessel, onshore facility, or offshore facility for discharge of oil; exceptions; amount of liability; procedure for recovery.

(f) (1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil is discharged in violation of subsection (b) (2) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section

for the removal of such oil by the United States Government in an amount not to exceed $100 per gross ton of such vessel or $14,000,000, whichever is lesser, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil is discharged in violation of subsection (b) (2) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Secretary is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he deter-

mines because of size, type, and location do not present a substantial risk of the discharge of oil in violation of subsection (b) (2) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil is discharged in violation of subsection (b) (2) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

Proof by owner or operator of vessel, onshore facility, or offshore facility of liability of third party for discharge of oil; exceptions to third party liability; amount of liability; procedure for recovery.

(g) In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil is discharged in violation of subsection (b) (2) of this section proves that such discharge of oil was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United

States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for removal of such oil by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil in violation of subsection (b) (2) of this section, the liability of such third party under this subsection shall not exceed $100 per gross ton of such vessel or $14,000,000, whichever is the lesser. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred, if such owner or operator were liable. If the United States can show that the discharge of oil in violation of subsection (b) (2) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

Preservation of rights of owner or operator of vessel, onshore facility, or offshore facility, or United States against any third party.

(h) The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) the United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil.

Removal by owner or operator of vessel, onshore facility, or offshore facility of discharged oil; suit against United States for recovery of reasonable cost of removal; applicability to Outer Continental Shelf Lands Act; payment of judgment.

(i) (1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil is discharged in violation of subsection (b) (2) of this section acts to remove such oil in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing clauses.

(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act.

(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the fund established pursuant to subsection (k) of this section.

Issuance of rules and regulations consistent with the National Contingency Plan; compliance; imposition of civil penalties for violations; amount.

(j) (1) Consistent with the National Contingency Plan required by subsection (c) (2) of this section, as soon as practicable after April 3, 1970, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil, (B) establishing criteria for the development and implementation of local and regional oil removal con-

tingency plans, (C) establishing procedures, methods, and requirements for equipment to prevent discharges of oil from vessels and from onshore facilities and offshore facilities, and (D) governing the inspection of vessels carrying cargoes of oil and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from such vessels in violation of this section.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulation, shall be liable to a civil penalty of not more than $5,000 for each such violation. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.

Authorization of appropriations

(k) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury not to exceed $35,000,000 to carry out the provisions of subsections (c), (i) and (*l*) of this section and section 1162 of this title. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to, or deposited in, said fund shall remain available until expended.

Administration of oil pollution control; delegation of authority by President; availability of appropriations; utilization of personnel, services, and facilities.

(*l*) The President is authorized to delegate the administration of this section to the heads of those Federal depart-

ments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section and section 1162 of this title. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

Enforcement of provisions

(m) Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

Jurisdiction and venue

(n) The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i) (1) of this section, arising under this section. In the case of Guam, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

Existing liability for damages for oil discharge or removal not affected or modified; power of State or political subdivision thereof to impose requirements or liabilities for oil discharge not preempted; existing Federal, State, or local authority or law not affected or modified.

(*o*) (1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly-owned or privately-owned property resulting from a discharge of any oil or from the removal of any such oil.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil into any waters within such State.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this chapter or any other provision of law, or to affect any State or local law not in conflict with this section.

Financial responsibility of vessels; amount; establishment; effective dates; administration of provisions; claim for costs against insurer; study and report on need for financial responsibility of vessels, and onshore and offshore facilities.

(p) (1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of $100 per gross ton, or $14,000,000 whichever is the lesser to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, op-

erates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) The provisions of paragraph (1) of this subsection shall be effective one year after April 3, 1970. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency head within sixty days after April 3, 1970. Regulations necessary to implement this subsection shall be issued within six months after April 3, 1970.

(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

(4) The Secretary of Transportation, in consultation with the Secretaries of Interior, State, Commerce, and other interested Federal agencies, representatives of the merchant marine, oil companies, insurance companies, and other interested individuals and organizations, and taking into account the results of the application of paragraph (1) of this subsection, shall conduct a study of the need for and, to the extent determined necessary—

(A) other measures to provide financial responsibility and limitation of liability with respect to vessels using the navigable waters of the United States;

(B) measures to provide financial responsibility for all onshore and offshore facilities; and

(C) other measures for limitation of liability of such facilities;

for the cost of removing discharged oil and paying oil damages resulting from the discharge of such oil. The Secretary of Transportation shall submit a report, together with any legislative recommendations, to Congress and the President by January 1, 1971.

SUBMERGED LANDS ACT OF 1953

(Chapter 29)

Subchapter II.—Lands Beneath Navigable Waters Within State Boundaries.

§ 1311. Rights of the States—Confirmation and establishment of title and ownership of lands and resources; management, administration, leasing, development, and use.

(a) It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

Release and relinquishment of title and claims of the United States; payment to States of moneys paid under leases.

(b) (1) The United States releases and relinquishes unto said States and persons aforesaid, except as otherwise

reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on May 22, 1953, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

Leases in effect on June 5, 1950

(c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however,* That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from May 22, 1953 equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or re-

placements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however*, That within ninety days from May 22, 1953 (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and May 22, 1953, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee; and (ii) the lessee shall file with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such lease, instruments consenting to the payment by the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents, royalties, and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee;

Authority and rights of the United States respecting navigation, flood control and production of power.

(d) Nothing in this chapter shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power;

Ground and surface waters west of the 98th meridian

(e) Nothing in this chapter shall be construed as affecting or intended to affect or in any way interfere with or

modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian, relating to the ownership and control of ground and surface waters; and the control, appropriation, use, and distribution of such waters shall continue to be in accordance with the laws of such States.

Limitation of Liability Act

(Chapter 8)

§ 183. Amount of liability; loss of life or bodily injury; privity imputed to owner; "seagoing vessel"

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered

tonnage: *Provided,* That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this title, the term "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this title.

Florida — Oil Spill Prevention and Pollution Control Act of 1970, Chapter 70-244, Laws of Florida (Fla. Stat. Ann. Chapter 376) is reproduced in the Appellant's Appendix, page 56.

Annotated Code of Maryland, 1971 Cumulative Supplement, Article 96A

Pollution Abatement

§ 23. Declaration of public policy and legislative intent.

Whereas the quality of the waters of this State is vital to the public and private interests of its citizens; and

Whereas pollution constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water; and

Whereas the problem of water pollution in this State is closely related to the problem of water pollution in adjoining states; and

Whereas it is hereby declared to be the public policy of this State to improve, conserve and manage the quality of the waters of the State and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide that no waste be discharged into any waters of the State without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters; to provide for the prevention abatement and control of new or existing water pollution; and to cooperate with the agencies of other states and the federal government in carrying out these objectives; now, therefore

It is the intention of the General Assembly in the enactment of this subtitle to improve, conserve and manage the quality of the waters of the State. (1970, ch. 243.)

§ 24. Definitions.

For the purposes of this subtitle, the following words and phrases shall have the following meanings:

(a) *"Pollution"* means such contamination or other alteration of the physical, chemical or biological properties, of any waters of the State, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge or deposit of any organic matter, harmful organisms, liquid, gaseous, solid, radioactive, or other substance into any waters of the State as will render such waters harmful, detrimental or injurious to public health,

safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

(b) "*Wastes*" means industrial wastes and all other liquid, gaseous, solid or other substances which will pollute any waters of this State.

(c) "*Treatment works*" means any plant or other works, used for the purpose of treating, stabilizing or holding wastes.

(d) "*Disposal system*" means a system for disposing of wastes, either by surface or underground methods, and includes treatment works, disposal wells and other systems.

(e) "*Waters of the State*" means both surface and underground waters within the boundaries of the State or subject to its jurisdiction, including that portion of the Atlantic Ocean within the boundaries of the State, the Chesapeake Bay and its tributaries, the flood plain of free-flowing waters on the basis of a fifty (50) year flood frequency, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used for the purpose of collection, conveyance, or disposal of sanitary sewage.

(f) "*Person*" means the State or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation. (1970, ch. 243; 1971 ch. 197.)

§ 25. Powers and duties of Department.

The Department shall have and may exercise the following powers and duties:

(a) To exercise general supervision over the administration and enforcement of this subtitle and all rules, regulations and orders promulgated pursuant thereto;

(b) To develop comprehensive programs for the prevention, control and abatement of pollution of the waters of the State;

(c) To advise, consult, and cooperate with other agencies of the State, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this subtitle;

(d) To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions;

(e) To encourage, participate in, finance, or conduct studies, investigations, research and demonstrations relating to water pollution and the causes, prevention, control, and abatement thereof;

(f) To collect and disseminate information relating to water pollution and the prevention, control, and abatement thereof;

(g) To adopt, modify, repeal and promulgate water quality standards for the waters of the State, and effluent standards for waters discharged into the waters of the State;

(h) To adopt, modify, repeal, and promulgate, after due notice and hearing, and to enforce rules and regulations implementing or effectuating its powers and duties;

(i) To issue, modify, or revoke orders (1) prohibiting discharges of wastes into the waters of the State; (2) requiring the construction, modification, extension or alteration of new or existing disposal systems or treatment works or parts thereof or the adoption of other reasonable remedial measures to prevent, control or abate pollution or undesirable changes in the quality of the waters of the State;

(j) To hold hearings, to issue notices of hearing and subpoenas requiring the attendance of witnesses and the production of evidence, to administer oaths, and to take such

testimony as it deems necessary, and any of these powers may be exercised by the Director or by a hearing officer designated in writing by the Director;

(k) To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction of, disposal systems or treatment works or any part thereof in connection with the issuance of permits or approvals as are required by this subtitle;

(l) To issue, continue in effect, revoke, modify, or deny, under such conditions as it may prescribe, permits for the discharge of waters or wastewaters into the waters of the State, and for the installation, modification, or operation of disposal systems or any parts thereof;

(m) To require proper maintenance and operation of disposal systems;

(n) To exercise all incidental powers necessary to carry out the purposes of this subtitle. (1970, ch. 243.)

§ 26. Polluting or contaminating State waters; activities requiring permit from Department.

(a) It shall be unlawful for any person: (1) to cause pollution of any waters of the State or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the State; or (2) to discharge any wastes into any waters of the State which would violate effluent standards or reduce the quality of such waters below the water quality standards established therefor by the Department. Any such action is hereby declared to be a public nuisance.

(b) Subject to the provisions of § 29 (c) of this subtitle, it shall be unlawful for any person to carry on any of the following activities unless he holds a current permit therefor from the Department for the disposal of all wastes or waters which are or may be discharged thereby into the waters of the State: (1) the discharge of any waters or wastewaters into the waters of the State in violation of regulations promulgated by the Department; (2) the construction, installation, modification, extension, alteration

or operation of any disposal system or part thereof; (3) the increase in volume, temperature or strength of any wastes in excess of the permissive discharges specified under any existing permit; (4) the construction, installation, or operation of any industrial, commercial, or other establishment or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes into the waters of the State or otherwise alter the physical, chemical, or biological properties of any waters of the State in any manner not already lawfully authorized; (5) the construction or use of any new outlet for the discharge of any wastes into the waters of the State.

The Department may require the submission of such plans, specifications, and other information as it deems necessary to carry out the provisions of this subtitle or to carry out the rules and regulations adopted pursuant to the provisions of this subtitle. (1970, ch. 243; 1971, ch. 197.)

§ 26A. Regulation of transfer, storage, etc., of oil and other unctuous substances.

The Department of Water Resources shall prescribe by regulation approved methods, facilities, standards, and devices for the transfer, storage, separating, removing, treating, and disposing of oil and other unctuous substances for the purpose of preventing pollution of waters of the State. No person shall engage in any commercial or industrial operation involving these activities unless approval is received from the Department in the form of a permit, indicating that the activities are in conformity with the prescribed regulations; but persons engaged in commercial or industrial operations involving these activities prior to June 30, 1971, may have until July 1, 1972, to obtain a permit. (1971, ch. 656.)

§ 27. Water quality and effluent standards.

(a) The Department may set water quality and effluent standards to be applicable to the waters of this State or portions thereof. The standards shall be such as to protect the public health, safety and welfare and the present and

future use of such waters for public water supply, the propagation of fish and other aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses. Such standards may be amended from time to time by the Department.

(b) Prior to establishing, amending, or repealing water quality or effluent standards the Department shall, after due notice, conduct public hearings thereon. Notice of public hearings shall specify the waters for which standards are sought to be adopted, amended, or repealed and the time, date, and place of the hearing. (1970, ch. 243.)

§ 28. Procedure upon violations.

(a) *Complaint to be served upon alleged violator; options then available to Department.* — Whenever the Department has reason to believe that a violation of any provision of this subtitle or of any regulation of the Department has occurred, it shall cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provision of law or regulation alleged to be violated, and the facts alleged to constitute a violation thereof.

Subsequent to or concurrent with service of the complaint as provided in subsection (c) of this section, the Department may exercise one of the following options:

(1) The Department may issue an order requiring that necessary corrective action be taken within the time prescribed in such order. Any person or persons named in the order may request in writing a hearing before the Department no later than ten (10) days after the date such order is served, in which case a hearing shall be scheduled within ten (10) days from receipt of such request and a decision shall be rendered within ten (10) days from the date of the hearing.

(2) The Department may require that the alleged violator file a written report regarding the alleged violation.

(3) The Department may require that the alleged violator appear before the Department at a time and place

specified by the Department and answer the charges outlined in the complaint.

(4) The Department may require that the alleged violator file a written report regarding the alleged violation and appear before the Department at a time and place specified by the Department and answer the charges outlined in the complaint.

If the Department exercises the option provided by paragraph (2) of this subsection, the alleged violator or violators may request in writing a hearing before the Department no later than ten (10) days after the date that notice of the requirement of the written report is served. The appearance of the alleged violator or violators before the Department under the options provided by paragraph (3) or (4) of this subsection shall be an administrative hearing, and the parties in all hearings conducted under this subsection shall have the rights of parties in contested cases provided in §§ 251 and 252 of Article 41 of this Code.

If the Department exercises the option provided by paragraphs (2), (3), or (4) of this subsection, the Department shall not issue an order requiring corrective action to be taken as a result of the alleged violation before the expiration of the time set for the filing of any report and the holding of any hearing required pursuant to this subsection. Thereafter, the Department may issue an order requiring that necessary corrective action be taken within such time as prescribed in such order, and no person shall be entitled to a hearing before the Department as a result of such order.

Notice of a hearing or of a requirement that a written report be filed shall be served on the alleged violator in accordance with the provisions of subsection (c) of this section not less than ten (10) days before the time set for the hearing or for the filing of a report.

All orders issued by the Department pursuant to the provisions of this section shall be served on the person or persons affected thereby in accordance with the provisions

of subsection (c) of this section, and upon service shall become immediately effective according to their terms.

(b) *Judicial review of departmental order.* — Persons aggrieved by an order issued hereunder shall not have the right to appeal to the board of review of the Department of Natural Resources as provided in § 237 of Article 41 of this Code, but may obtain immediate judicial review pursuant to the provisions of §§ 255 and 256 of Article 41 of this Code and the Maryland Rules of Procedure.

(c) *Manner of service of notices, orders, etc.* — Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the Department may be served on any person affected thereby personally or by publication, and proof of such service may be made in like manner as in case of service of process in a civil action, such proof to be filed in the office of the Department; or such service may be made by mailing a copy of the notice, order, or other instrument by certified or registered mail, directed to the person affected at his last known post-office address as shown by the files or records of the Department, and proof thereof may be made by the sworn statement or affidavit of the person who did the mailing, filed in the office of the Department.

(d) *Record of hearings; witnesses' fees and mileage; court order requiring appearance, etc., at hearing.* — A verbatim record of the proceedings of hearings may be taken when deemed necessary or advisable by the Department. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions. In case of refusal to obey a notice of hearing or subpoena issued under this section, any circuit court shall have jurisdiction upon application of the Department, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt. (1970, ch. 243.)

§ 28A. Violations and penalties.

(a) *Generally.* — Any person who shall violate any of the provisions of, or who fails to perform any duty im-

posed by, this subtitle or regulation issued hereunder or who violates any order of the Department made pursuant to this subtitle shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine of not more than ten thousand dollars ($10,000.00) or by imprisonment not to exceed one (1) year, or both, and in addition thereto may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate offense.

(b) *Duty of Attorney General to prosecute or bring action for injunction; finding of Department deemed prima facie evidence in injunction proceedings.* — It shall be the duty of the Attorney General on the request of the Department to prosecute such criminal cases or to bring an action for an injunction against any person violating the provisions of this subtitle, or violating any valid order of the Department. In any action for an injunction brought pursuant to this section, any finding of the Department after hearing shall be prima facie evidence of the fact or facts found therein.

(c) *Grounds for injunction.* — Upon a showing by the Attorney General in behalf of the Department that any person is violating or is about to violate the provisions of this subtitle or is violating or is about to violate any valid order of the Department, an injunction shall be granted without the necessity of showing a lack of adequate remedy at law.

(d) *Order to correct violations; compliance therewith within one year; extension of time for compliance.* — In any case where a violation of any provision of this subtitle has occurred and the existence of such violation has been finally determined, the Department shall promptly issue an order requiring the correction of each violation found to have occurred, and the Department shall secure compliance with the provisions of such order within one (1) year from the date of service thereof on the violator. If the violation has not been corrected and a plan for compliance submitted by the violator has not been approved by the Department within the aforementioned one-year

period, the violation shall be referred to the Attorney General immediately after the expiration of the one-year period, who shall thereupon, and in addition to any other actions which he may have taken or which he may elect to take against the violator, take appropriate legal action to require correction of the violation. Nothing in this subsection shall be construed to prevent the Attorney General or the Department from taking action against the violator before the expiration of the aforementioned one-year period. Any court having jurisdiction of an action for an injunction brought under the provisions of this subtitle shall have the discretion, based upon the particular facts of each case, to extend the time period allowed for the correction of a violation for one or more additional one-year periods. (1970, ch. 243.)

§ 28B. Construction and purpose of subtitle; remedies additional and cumulative.

This subtitle shall not be construed as repealing any law of the State relating to the pollution of waters thereof or any conservation laws, but shall be held and construed as auxiliary and supplementary thereto, except to the extent that the same are in direct conflict herewith. It is the purpose of this subtitle to provide additional and cumulative remedies to prevent, abate, and control the pollution of the waters of the State. Nothing herein contained shall be construed to abridge or alter rights of action or remedies in equity or under existing common law or statutory law, criminal or civil, nor shall any provision of this subtitle, or any act done by virtue thereof, be construed as estopping the State, or any person, as riparian owners or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution. (1970, ch. 243.)

§ 29. Vessels discharging oil.

(a) *Prohibited; exceptions; "oil" defined.* — Except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, it shall be unlawful for any person to discharge or permit the discharge of oil

in any manner into or upon the waters within the jurisdiction of the State of Maryland from any vessel, ship, or boat of any kind.

The term "oil" shall mean any of a large class of unctuous substances of vegetable, animal or mineral origin, which are liquid or at least easily liquefiable on warming and soluble in ether but not in water.

(a-1) *Duty to report discharge.* — Notwithstanding any of the provisions of this subtitle, any person discharging or permitting the discharge of oil, or any person either actively or passively participating in the discharge or spilling of oil, into the waters of the State either from a land-based installation, including vehicles in transit, or from any vessel, ship or boat of any kind, shall not knowingly fail to report the incident immediately to the appropriate federal authority and/or the State Department of Water Resources and shall not knowingly fail to remain available until clearance to leave is given by the appropriate officials.

(b) *Penalty for violation of subsection (a) or (a-1); pecuniary liability of vessel.* — Any person who violates subsections (a) or (a-1) of this section is guilty of a misdemeanor, and upon conviction shall be punished by a fine or by imprisonment or by both fine and imprisonment, for each offense as provided in § 28A of this article. And any vessel from which oil is discharged in violation of subsection (a), shall be liable for the pecuniary penalty as specified in this section, and clearance of such vessel from a port of the State may be withheld until the penalty is paid, and said penalty shall constitute a lien on such vessel.

(c) *Administration and enforcement of section.* — In the administration of this section the Department may make use of the organization, equipment, and agencies, including engineering, clerical and other personnel, employed in the improvement and preservation of waters and natural resources of the State of Maryland in the enforcement of laws for the preservation and protection of the waters and natural resources of the State of Maryland. And for the better enforcement of the provisions of this section, all

persons authorized by law of this State to make arrests shall have the power and it shall be their duty to swear out process and to arrest and take into custody, with or without process, any person who may violate any of said provisions; provided, that no person shall be arrested without process for a violation not committed in the presence of some one of the aforesaid officials; and provided further, that whenever any arrest is made under the provisions of the said section the person so arrested shall be brought forthwith before a magistrate, judge, or court of the State for examination of the offenses alleged against him; and such magistrate, judge, or court shall proceed in respect thereto as authorized by law in cases of crimes against the State of Maryland.

(d) *Notice to Department of violations.* — Whenever any person, or ship is accused of violating the provisions of this section, it shall be the duty of the arresting officer to notify the Department forthwith in writing, for the purpose of permitting it to take any steps in the proceeding that it may deem advisable. The provisions of this subsection are intended to be directory only.

(e) *Construction of section.* — This section shall be in addition to the laws existing prior to June 1, 1949, for the preservation and protection of waters of the Chesapeake Bay and its tributaries and shall not be construed as repealing, modifying, or in any manner affecting the provisions of those laws. (1970, ch. 243; 1971, ch. 651.)

§ 29A. Development of program to respond to emergency oil spillage.

The responsibility of developing a program, including training, which would enable the State to respond to an emergency oil spillage in Maryland waters is that of the Maryland Port Authority in the Baltimore Harbor area and of the Department of Natural Resources in other waters of the State. These agencies shall coordinate the efforts of the various State and local agencies aiding in the operation and request the aid of the appropriate federal agencies if necessary. (1970, ch. 243.)

§ 29AB. Bond required of vessels entering to discharge or receive oil cargo.

(a) Except for a vessel carrying or receiving twenty-five (25) barrels of oil or less, any vessel, whether or not self-propelled, in or entering upon the waters of the State for the purpose of discharging or receiving a cargo of any bulk oil in the State shall post a bond with the Maryland Port Authority or the Department of Natural Resources of at least one hundred dollars ($100.00) per gross ton of oil cargo to the State. The bond shall be in a form approved by the Authority and the Department and may be obtained individually or jointly by the vessel, its owner or agent, its charterer, or by the owner or operator of the terminal at which the vessel discharges or receives the bulk oil. If the Authority or the Department determines that oil has been discharged or spilled into the waters of the State from the vessel, the bond shall be forfeited, to the extent of the costs incurred by the Authority or the Department in eliminating the residue of the oil discharge or spillage, to the extent of damage caused to the natural and recreational resources of the State, and to the extent of any otherwise uncollectible fines levied against the vessel, its owner or agent, its charter, or the owner or operator of the terminal at which the vessel discharges or receives the bulk oil. The remedies provided in this section shall be in addition to all other remedies available. No bond shall be released without certification by the Authority or the Department that the vessel has not been a source of oil discharge or spillage into the waters of the State. Where a vessel has presented adequate evidence of financial responsibility to the federal government, it shall be exempt from the Maryland provisions requiring the posting, and forfeiture, on certain conditions of a bond.

(b) Any vessel in the waters of the State for the purpose of discharging, or which receives, cargo of bulk oil without being bonded as provided in subsection (a) of this section, and the owner, agent, and charterer thereof, and the owner or operator of the terminal at which the vessel discharges or receives bulk oil without being so bonded, shall be pun-

ished by a fine of not more than five thousand dollars ($5,000.00). (1971, ch. 504.)

§ 29B. Compensatory fee for oil spillage.

The Maryland Port Authority and the Department of Natural Resources shall charge and collect a compensatory fee from the person responsible for the oil spillage. This fee shall cover the cost of labor, equipment operation, and materials necessary to eliminate the residue of oil spillage and the cost of restoring areas damaged by the spillage to their original condition and said fee shall be retained by the agency charging the fee. (1970, ch. 243; 1971, ch. 504.)

§ 29BC. Liability for damages caused by oil spillage.

The person responsible for the oil spillage shall be liable to any other person for any damages to his real or personal property directly caused by the spillage. (1971, ch. 504.)

§ 29C. Effect of subtitle on jurisdiction of State Department of Health and Mental Hygiene.

Nothing in this subtitle shall be construed to alter, change, modify or restrict the jurisdiction of the State Department of Health and Mental Hygiene as set forth in this Code. (1970, ch. 243.)

§ 29D. Investigation of damage to aquatic resources; suit against persons liable for damage.

(a) Whenever there occurs in the waters of the State any condition indicative of damage to aquatic resources, including, but not limited to, mortality of fish and other aquatic life, it shall be the duty of the Department of Natural Resources to investigate the occurrence, to determine the nature and extent of the occurrence, and to endeavor to establish the cause and source of the occurrence. The Department of National Resources shall act on these findings, as hereinafter provided, to require the repair of any damage done and the restoration of water resources to a degree necessary to protect the best interests of the people of the State.

(b) The Department of Natural Resources, if it believes the institution of suit to be advisable, shall turn over to

the Attorney General all pertinent information and data. The Attorney General thereupon shall file suit against the person or persons causing the condition complained of, who shall be jointly and severally liable for the reasonable cost of rehabilitation and restoration of the resources damaged and the cost of eliminating the condition causing the damage. (1970, ch. 243.)

CHAPTER 356

LAWS OF MARYLAND OF 1972

(Senate Bill 12)

AN ACT to add new Sections 29E through 29G inclusive to Article 96A of the Annotated Code of Maryland (1964 Replacement Volume and 1971 Supplement), title "Water Resources", said new sections to follow immediately after Section 29D thereof, and to be under the new subtitle "Oil Discharge Containment, Control and Clean-up", granting the Department of Natural Resources the authority to license oil terminal facilities; establishing a system of licensing and fees therefor; creating the Maryland Oil Disaster Containment, Clean-up and Contingency Fund, in order to develop and provide the equipment, personnel, and plans to respond and contain damage caused by the discharge of oil, petroleum products, and their by-products, into the lands and waters of this State, to contain and remove these discharges, to provide for restoration of damaged resources, and to require reimbursement to the fund of the cost of such containment, clean-up, removal and restoration; to provide for criminal sanctions; and matters generally relating thereto.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That new Sections 29E through 29G inclusive be and are hereby added to Article 96A of the Annotated Code of Maryland (1964 Replacement Volume and 1971 Supplement), title "Water Resources", said new sections to follow immediately after Section 29D thereof and to be

under the new subtitle "Oil Discharge Containment, Control and Clean-up", and to read as follows:

Oil Discharge Containment, Control and Clean-Up

29E.

The following words and phrases as used in this subtitle, unless a different meaning is plainly required by context, have the following meaning:

(1) "Department" means the State Department of Natural Resources.

(2) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(3) "Fund" means the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund.

(4) "Oil, petroleum products, and their by-products" means oil of any kind and in any liquid form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

(5) "Oil terminal facility" means any facility of any kind and related appurtenances receiving, transferring or discharging oil, petroleum products and their by-products to or from any commercial vessel, tank truck, tank car or any other vehicle used for transporting the same in the State of Maryland and having a total storage capacity in excess of 3,000 barrels.

(6) "Operate or operator" means any person owning or operating an oil terminal facility whether by lease, contract, or any other form of agreement.

(7) "Person" means individual, partnership, joint venture corporation, or any group of the foregoing organized or united for a business purpose.

(8) "Total storage capacity" means the aggregate capacity available for the storage of oil, petroleum products, and their by-products at an oil terminal facility.

(9) "Barrel" means any measure of petroleum product or their by-products which consists of 42.0 U.S. gallons of liquid measure.

29F.

(a) No person shall operate or cause to be operated an oil terminal facility as described in this subtitle without a license.

(b) Licenses required under this subtitle shall be secured from the Department subject to terms and conditions set forth in this subtitle, and by paying an annual fee according to the following schedule using the total storage capacity at an oil terminal facility as an indicator of the utilization, impact, and possible hazards to the natural resources of Maryland:

License Designation	*Total Storage Capacity in Barrels*	*Annual License Fee*
Class A	50,000 or greater	$5,000.00
Class B	20,000 to less than 50,000	1,500.00
Class C	10,000 to less than 20,000	1,000.00
Class D	5,000 to less than 10,000	500.00
Class E	Less than 5,000 but greater than 3,000	250.00

The annual fee shall be no less than $250.00 nor greater than $5,000, provided, however, that the maximum paid by any one person shall not exceed $25,000. At the time the fund reaches its maximum of $500,000, collection of the annual license fees shall be abated. Annual fees shall be paid by these facilities to the State Comptroller and upon receipt by him credited to the Maryland Oil Disaster Containment, Clean-up and Contingency Fund. Annual fees shall be paid by these facilities by no later than September 1, for the fiscal year beginning July 1 immediately preceding. In no event shall the collection of license fees for any one year exceed the sum of $250,000; if such a contingency should occur, that excess over $250,000 shall be credited or refunded to the licensees on a prorated basis.

(c) As a condition precedent to the issuance or renewal of a license the Department shall require satisfactory evidence that the applicant has implemented or is in the process of implementing state and federal plans and regulations for control of pollution related to oil, petroleum products, and their by-products and the abatement thereof when a discharge occurs.

(d) Any person who violates subsections (a) through (c) of this section is guilty of a misdemeanor and upon conviction shall be punished by fine of not less than $500.00 nor more than $10,000.00.

29G.

(a) The Maryland Oil Disaster Containment, Clean-up and Contingency Fund is established, to be used by the Department of Natural Resources for the purposes of development of equipment, personnel and plans; and for contingency actions to respond to, contain, clean up and remove from the land and waters of the State discharges of oil, petroleum products and their by-products into, upon or adjacent to the waters of the State; and to restore natural resources damaged by such discharges. The cost of containment, clean-up, removal and restoration shall be reimbursed the State by the person responsible for the discharge and this reimbursement shall be credited to the fund. The fund shall be limited to the sum of $500,000.00. To this sum shall be credited all license fees, penalties, and other charges related to this subtitle, and to this fund shall be charged any and all expenses of the Department of Natural Resources related to this subtitle. At the time that the balance in the fund reaches the limit, license fees shall be temporarily abated or adjusted pursuant to § 29F(b).

(b) Moneys in the fund not needed currently to meet the obligations of the Department in the exercise of its responsibilities under this subtitle shall be deposited with the Treasurer of the State to the credit of the fund and may be invested as provided by statute. Interest received

on the investment shall be credited to the Maryland Oil Disaster Containment, Clean-up and Contingency Fund.

(c) The Secretary of Natural Resources shall determine the proper allocation of the monies credited to the Maryland Oil Disaster Containment, Clean-up and Contingency Fund for the following purposes and no others:

(1) Administrative expenses, personnel expenses, and equipment costs of the Department related to the purposes of this subtitle.

(2) Prevention, control, containment, clean-up and removal of discharges into, upon or adjacent to the waters of the State of discharges of oil, petroleum products and their by-products, and the restoration of natural resources damaged by such discharges.

(3) Development of containment and clean-up equipment, plans and procedures in accordance with the purposes of this section.

(4) Payment of costs of insurance by the State to extend or implement the benefits of the fund.

SEC. 2. *And be it further enacted*, That this Act shall take effect July 1, 1972.